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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re JAMES M. et al., Persons Coming  
Under the Juvenile Court Law.

B220670  
(Los Angeles County  
Super. Ct. No. CK76082)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ANGEL M.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County. Zeke Zeidler, Judge. Affirmed.

Grace Clark, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

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Angel M., mother of five minor children, appeals the jurisdictional and dispositional orders of the juvenile court. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Angel M. and James M. are the parents of James M., II, Elliott<sup>1</sup> M., Chloe M., Savannah M., and Isabella M. The family came to the attention of the Department of Children and Family Services in 2009 when father James M. called the DCFS hotline. James M. reported that Elliott M. had telephoned him, reporting that Angel M. was hitting herself in the head with a hammer. Police determined that Angel M. was not hitting herself with a hammer, but that James M. had directed his son to make this allegation so that she would be taken into protective custody and the children would be placed with James M.

The police had previously had contact with this family: two months earlier Angel M. had obtained a restraining order against James M., but relented and permitted him back into the family home. James M., who had sustained a job-ending work injury, was unable as a result of his injury to have sexual relations with Angel M., and had apparently concluded that she was having affairs with other men. James M. had told the children of this belief, causing the sons to disrespect their mother and to call her a whore.

The police told DCFS that no physical altercations had occurred between the parents but that there was “emotional abuse stemming from the father’s treatment of the mother. Father is trying to get the children to turn against their mother.” The police requested DCFS intervention.

A DCFS social worker interviewed the family. Chloe M. reported that her mother had pushed and shoved James M., II when they were arguing. According to DCFS,

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<sup>1</sup> This child’s name is spelled both as “Elliot” and “Elliott” in the record, with both spellings occurring even in documents written by Angel M. We follow the spelling in the original petition (“Elliott”) but do not alter the spelling of the child’s name when it appears in quoted materials.

“Chloe stated her mother ‘always calls the cops when they (referring to the mother and father) are arguing.’ Chloe continued to state the mother ‘will say things’ about the father directly to her such as ‘he bothers her.’ Chloe reported she was informed that her mother ‘took a hammer to break down my brother’s door.’ Chloe reported her father did tell her that the mother ‘went after Elliot with a hammer in one hand and a knife in the other.’ Chloe reported at the time she was not at home and was actually at a paternal aunt’s home for a visit.” Chloe M. stated that her mother had said that when she obtained custody of the children, she would send the boys to juvenile hall, Chloe M. to foster care, and keep the two youngest children. Chloe M. reported that there existed a cellular phone video of a conflict between herself and her mother.

James M., II spoke with DCFS. “James reported his mother is telling him that the father ‘is stealing her things.’ James reported there was a situation with him taking his mother[’]s jewelry. James continued by stating he was mad at the mother for taking some of his things. James reported he and his brother were with their father fishing. Upon return to the home ‘the house was clean’ and his and his brother Elliot’s “PSP and iPod were gone along with some Carson Palmer Jersey and some WWII items” that his father had given to them were missing. James did report that he was mad and proceeded to go into the mother[’]s room looking for his things. He was in the mother[’]s closet, and thought since the mother took some of his things that meant something to him that he would in turn take a few of his mother[’]s things and did in fact take his mother[’]s rings. James reported when his mother returned home he asked the mother where his stuff was, she continued to state she did not know what he was talking about. James reported that the mother saw that her things were missing and she proceeded to call the police.” According to James, Angel M. was pretending to cry over her possessions, but she also taunted him that she had his possessions.

James M., II said that when he was out of the house but on the telephone, his mother had “attacked” Elliott M. and that he could hear Elliott M. screaming over the phone. James M., II said that his father allowed him to hear this telephone call and that he could hear Angel M. screaming. James M., II said that Angel M. was ““taunting

Elliott saying stop hitting me with the hanger Elliott.’ James stated he could hear Elliott saying ‘I’m not I’m on the other side of the door.’ James stated that the call disconnected and his father told him Elliott was stating the mother was trying to get through the door, she broke Elliott’s phone, James continued to state his brother Elliott was crying.” When James M. and James M., II reached the house, the police were there; Angel M. had some bruises on her hands; and she said that Elliott M. was lying about what had happened.

Savannah M. told DCFS that she had heard that her mother had broken Elliott M.’s phone and had run at him with a knife. She had heard something about her mother having a hammer. Savannah M. showed the social worker the video of Chloe M. and Angel M. DCFS described the video as follows: “the mother [was] in what appeared to be her bedroom, Chloe and mother were arguing about the phone, Chloe was being very disrespectful towards the mother, mother was holding a cell phone in her hand making statements to the child James to get Chloe out of here, Chloe grabbed the phone from mother, got the phone from the mother[’]s hands, mother attempted to grab the phone out of Chloe’s hands, mother was facing Chloe’s back, she was leaning in grabbing the phone from Chloe, it appeared the two fell down mother on top of Chloe, the two were struggling over the phone, the video ended.”

Angel M. reported to DCFS that James M. had gone through her possessions and taken her jewelry. He had changed the locks on the house so that she could not get in. She said that James M., II had called her “a bitch, a whore, and a slut.” She reported that James M., II and Elliott M. had “destroyed” her bedroom and were pleased with themselves about it. She claimed she had tried to make the marriage work but that James M. had attended only one Narcotics Anonymous meeting and one therapy session. She reported that James M. was telling the children that she “sleeps around” and has AIDS, and that he had also falsely told Chloe M. that Angel M. was using heroin. She said that James M. told the youngest child that Angel M. was going away because she did not love her.

Angel M. reported that the episode with Elliott M. began when she took the boys’ electronics from their room as a consequence for their disrespect and name-calling.

According to Angel M., Elliott M. telephoned his father about the iPod, and that when she went to speak to him, he slammed his bedroom door in her face. She told Elliott M. to get off the phone. Elliott M. was screaming and calling her names. She took Elliott M.'s phone and broke it in half. Angel M. reported that James M. had told Elliott M. to call the police to have Angel M. arrested. She said, "Elliott started hitting things, hitting the door with the hammer," and that Elliott M. broke the door with his foot. She retreated to her room and put her bed against the door. Emergency services telephoned the house in response to the 911 call and asked if she was in danger of hurting herself. She blamed Elliott M. for a cut on her wrist. She denied ever telling her children that she would put them in juvenile hall or foster care. She alleged that James M. was coaching the children.

James M. denied that he had told the children that Angel M. had AIDS, but did claim that he knew Angel M. was having unprotected sex and that he had told her to be careful about it for the sake of the children.

In a meeting with the family, DCFS articulated concerns about the parents' involvement of the children in their marital affairs and about the clear impact that the parents' conflicts were having on the emotional state of the children. At this meeting Angel M. contended that James M. had been physically abusive with her, having once hit her and choked her seven years earlier. The parents agreed to enter into a Voluntary Family Maintenance Case with DCFS, and that James M. would leave the house but keep regular and daily contact with the children. Further, James M. and the children would enroll in counseling, and Angel M. would continue counseling.

Soon thereafter, Chloe M. ran away from home after Angel M. attempted to restrict her cell phone use. Angel M. alleged that James M. told Chloe M. to run away because Angel M. was going to harm her. Chloe M. attributed her departure to a conflict arising out of text messages received on Angel M.'s old phone, now in Savannah M.'s possession. According to Chloe M., a man named Fred, known to Angel M., left "disgusting" messages on the phone, and Chloe M. responded that he should leave them alone. She told her father about the messages, and she tried to tell her mother, but her mother told her to ignore them. Chloe M. said that she did not want to be with her

mother anymore, that she did not feel safe with her, that Angel M. yells a lot, and that she was scared of her mother. She reported that since the meeting with DCFS her father had stopped saying things about her mother, but her mother had continued to speak of her father. She had seen a family photograph from which her father's face had been cut. She reported that she did not want to return home or see either parent for a while. Chloe M. reported that Angel M. was frequently absent and that the older children were taking care of the youngest child.

Elliott M. reported that the incident with Chloe M. related to Chloe M. believing that the man leaving the message was a person with whom Angel M. was having an affair and her desire to "do something" about it. Elliott M. reported that Angel M. blamed James M. and alleged that James M. had directed Chloe M. to contact the man. Elliott M. confirmed that Angel M. was often out—that she would come home from work, then go off to school before coming home between 11 p.m. and midnight. He stated that she would say she was going to school or the store but that she would be gone for several hours and not return with anything from the store.

Elliott M. also told DCFS that the incident with the police began with an argument between Angel M. and James M., II. He heard Angel M. banging on the door and asking for her rings. Elliott M. said that Angel M. was hitting the door with a hammer and that she broke the handle off the door. He said she entered the room with a knife and that he and Angel M. were fighting over the phone as he called his father to report his mother's conduct. Angel M. succeeded in taking the phone and broke it in half. Elliott M. said that he was telling his father that his mother was hitting her hand, not her head, with the hammer. He reported that his mother had told the police that he was trying to kill himself and that he had psychological problems. Elliott M. denied trying to harm himself. He said that he had kicked a door in because his mother had locked one of the younger children inside.

According to Elliott M., both parents were trying to compete for the children, and his mother was making up lies and trying to convince the children that their father was a bad person. His father was not talking about his mother anymore since the meeting with

DCFS. He said that since the incident with the hammer he was scared of his mother—although he believed that she was using the hammer to get in the room and to get the cell phone, not that she would have used the hammer on him. He said he would never have believed that his mother would do anything like that, but that he was frightened that she would “lose it” again the way she had that day.

James M., II also reported that James M.’s behavior had changed since the DCFS meeting and that he was “trying to make things better.” He had instructed the children “not to talk in any bad way” about their mother. Angel M., on the other hand, was yelling a lot, tore up James M.’s things, and cut him out of photographs. James M., II reported that Angel M. had summoned James M. to the house, had him fix a sink and clean a garage for hours, then sent him away because he was not allowed to be there. James M., II did not want to be with his mother but with his father. James M., II reported that Angel M. did not return home in the evening until quite late, 11:00 to 11:45 p.m.

Savannah M. told DCFS that her mother was gone for long periods, that she did not like that her father could not stay at the home, and that “I don’t want my parents fighting anymore.” She said that she had been sick and had many headaches.

Youngest child Isabella M. talked about her mom yelling at all the children and described her guinea pig as “shaking” and “scared” during the hammer incident. She said her mom was using a hammer, taking the handle off the door, and a lot of police came. She denied personally being frightened but said that her sister Chloe M. was shaking and scared. Isabella M. reported that her mother had lied and said that Elliott M. broke his cell phone, but that she had done it. Isabella M. denied that her parents ever hurt anyone at the house except that her mother hit James M., II, pushed him, and punched him in the arm. She said that her friend’s parents don’t fight. Isabella M. reported that her mother “drags” her with a hand grabbing her shirt collar, and said that she indicates that it hurt, but that her mother dragged her anyway.

Angel M. told DCFS that James M. was physically violent with her. She alleged that James M. had put a gun to her head and that she had to have stitches. She stated that

James M. would hit her in the morning before the children awakened so that they did not see.

DCFS detained the children based on Angel M.'s absence and the ongoing reports of emotional abuse. In the detention report, DCFS wrote, "At such time there continues to be concern within the family home as to the emotional distress these children have been experiencing. This family has been addressed on different occasions as to the need to refrain from involving the children in adult matters. The children continue to be exposed to ongoing disputes and chaotic situations relating to the marital issues and strains these two parents are experiencing. The children have expressed ongoing situations relating to the mother[']s repeated reactions with ongoing yelling, reactions of tearing the father[']s pictures out of family portraits, past name calling and degrading of the children. There is concern of mother's behavior with possible exaggeration and possible dishonesty on[] her part regarding actions the children have allegedly engaged in as well as the father's alleged actions. There is concern of possible unidentified and/or unaddressed mental health issues with both parents. There is concern of the mother's possible lack of honesty relating to past and current alleged events. There is concern that both parents have been and are continuing to inappropriately discuss and involve the children in their ongoing feud. There is concern that the children have been overly exposed to inappropriate talk against the opposite parent. It appears that the children are experiencing extremely stressful home situations and overall environment. These children in particular the oldest children appear to be emotionally drained and exhausted. The oldest children's refusal to return home to the mother continues to be of concern. The children's reports of combative situations occurring in the home continue to be of concern. The children appear to be in need of ongoing emotional support and [other] services in order to ensure they remain in a stable and safe environment. These parents appear to have created an overwhelming and chaotic environment. These children appear to be emotionally torn between possibly feeling resentment and confusion caused by their parents. There appears to have been ongoing and continuing inappropriate and undue added stress to these children leading to the oldest children acting out both verbally and



physically. It appears that the parents have remained focused as to their own individual needs and somehow have lost sight of their children's overall needs."

On January 28, 2009, DCFS filed a dependency petition with the juvenile court alleging that the children fell under the jurisdiction of the juvenile court under Welfare and Institutions Code<sup>2</sup> section 300, subdivisions (a), (b), and (j). The children were placed in the home of a paternal aunt. Numerous months passed before the petition was adjudicated. During this time, James M.'s visits with the children went well. James M. reported that Chloe M. had said that her mother told her to lie in court. The eldest children, James M., II and Elliott, refused to visit with their mother.

In March 2009, Angel M., in the presence of her attorney, recounted to DCFS numerous incidents of domestic violence by James M. over the past several years: one incident in which James M. choked her; another in which he threw her to the floor, causing her to require stitches; another in which he threatened her with a gun; and another in which he hit and kicked her. James M. denied the choking incident, claiming that he had merely held out his hand to stop Angel M. from hitting him. That incident, he said, occurred in front of the children.

James M., II, discussed violence between his parents: "I've seen them (mother and father) arguing. One day my dad wanted to take us to the beach. He wanted to use the BMW. He (father) reached into her purse to get the keys. She (mother) thought he was going through her purse to get her cell phone. She started swinging at him and hit her arm on the door." With respect to the choking incident, James reported, "He (father) came home late from a job and she thought he was having an affair and she started swinging at him. He grabbed her by the shoulders to get her to listen, but she kept swinging. He left so she could cool down." James M., II stated that his mother blamed injuries from falling down on James M.: "She would always lie."

In late June 2009, DCFS reported that James M., II had elected to appear for a visit with Angel M. when he was not expected. James M., II had said that he went on the

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code.

visit because a court hearing was coming and he wished to determine whether Angel M. was discussing the court case with Chloe M. during visits. James M., II suspected that Angel M. was engaging in impermissible discussions based upon his sister's post-visit conduct: she "act[ed] different" and "repeatedly ask[ed] him why he won't speak with mom and urge[d] him not to place blame on the mother." James M., II also reported that in June 2009, his mother spoke with him about the court case. Angel M. said that she was going to drop the charges and asked if James M. would drop the charges. James M., II reported that Angel M. said that if he testified at court they would both lose and the children would have to go to foster care. James M., II said that he told his mother that if he was asked to testify he would have to do so, and that he feels that his mother did not care about the children, only the case. Chloe M. reported that she heard bits of this June conversation and that it sounded like Angel M. was trying to tell James M., II not to testify against her.

Angel M. claimed that the conversation in question was initiated by James M., II and that he said he could not have a relationship with her unless she dropped charges against his father. She said that when she said that was not within her control, he threatened that if she did not drop the charges he would testify against her and say that she had hit him. The monitor present during this conversation told DCFS that she heard James M., II tell Angel M. that he could not have a relationship with her; that he wanted her to drop domestic violence proceedings against James M.; and that if she would not, he would testify that she had hit him. DCFS reported that the monitor "stated that mother sta[r]ted to argue with James II, mother stated that she never hit him and the child, James II, told her that it does not matter because 'they will believe me, not you.'"

A contested adjudication hearing was held on July 14, 2009. The petition, as amended, was sustained. Specifically, the court found that "On prior occasions [ ] the mother has engaged in physical struggles [with] [C]hloe and James, as well as exhibiting inappropriate [behavior in front of] all of the children including striking Elliott's door with a hammer and breaking his cell phone. Such behavior by the mother[ ] creates a detrimental home environment, placing the children at [risk of] physical and emotional

harm, danger and physical abuse.” The court also found true the amended allegation that Angel M. and James M. have “a history of engaging in violent altercations. Domestic violence between the father and mother endanger[s] the children’s physical and/or mental or emotional health and safety and creates a detrimental home environment and places the children at risk of physical and emotional harm[,] danger and damage.” Each allegation was a basis for jurisdiction under section 300, subdivisions (a) and (b).

The court ordered a progress report to address evaluation of James M.’s residence and the possible release of the children to him. DCFS recommended that the children be placed with James M., as their present caregiver was unwilling to continue in that role; there were no other relatives who could take all the children; there had been no problem with the father’s visits; the boys wanted to live with their father; and the girls were all willing to live with either parent. On August 11, 2009, the children were released to James M. pending a September 2009 contested disposition hearing.

Prior to that disposition hearing, DCFS reported to the court that Angel M.’s monitored visitation had been going very well and that Angel M. had been appropriate. The children were reported to be attending school, making friends, and happy to be with their father. Angel M. was no longer living in a house but was renting a room elsewhere. A psychologist ordered by the juvenile court to evaluate the parents found neither to have any major mental disturbance but that both parents lacked insight, failed to accept their role in the stressful situation of the family and how it negatively affected the children, and attempted to portray themselves as exceptionally free of common shortcomings to which most people will admit. The psychologist recommended counseling and parenting training, anger management education, and placement of the children in a neutral setting until the parents addressed their conflict in a manner that provided a safe emotional environment for the children.

On September 25, 2009, the juvenile court found by clear and convincing evidence that substantial danger existed to the physical health of the children and/or the children were suffering severe emotional damage, and that there was no reasonable means to protect them without removal from Angel M.’s physical custody; that reasonable efforts

had been made to prevent or eliminate the need for removal of the children from her custody; that the children's placement was necessary and appropriate; and that placement with James M. was the children's permanent plan. Family maintenance services were ordered for James M., and family reunification services were ordered for Angel M. Angel M.'s visits were ordered to be monitored, although they were to be unmonitored day visits once she and the children were in counseling; except that visits with Chloe M. were to be day visits in a public setting until liberalized after consultation with a therapist and Angel M.'s counsel. Angel M. appeals.

## **DISCUSSION**

### **I. Sufficiency of the Evidence**

Angel M. contends that the evidence was insufficient to establish that the children were at a substantial risk of suffering serious harm at her hands. Reviewing the jurisdictional findings for substantial evidence (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564), we conclude that the evidence was sufficient to support the court's decision to sustain the allegations of the petition under section 300, subdivisions (a) and (b).

The court sustained the allegations that Angel M. had physically struggled with both Chloe M. and James M., II; that she struck Elliott M.'s door with a hammer and broken a cell phone; and that she and James M. had a history of domestic violence. Mother does not contest these factual findings; instead, she claims that none of these incidents resulted in serious physical harm to the children, so there is no basis for jurisdiction. While there was no evidence that the children had been seriously physically harmed, the statute does not require that serious physical harm be inflicted before jurisdiction is appropriate; rather, both subdivisions (a) and (b) of section 300 provide that children fall within the jurisdiction of the juvenile court when there is "a substantial risk that the child will suffer[] serious physical harm." Substantial evidence supports the trial court's conclusion that a mother who breaks down a door with a hammer and

engages in physical confrontations with her children presents a substantial risk of inflicting serious physical harm on them. Similarly, the evidence of domestic violence between the parents supports the trial court's finding that the altercations between the parents, even if that violence had not been directed toward the children, presented a substantial risk of serious harm to the children. Angel M.'s claim that the evidence was insufficient to support jurisdiction over the children is meritless.

## **II. Removal from Angel M.'s Care**

Angel M. argues that there was not clear and convincing evidence that there were no reasonable means of protecting the children without removing them from her custody, and that the juvenile court erred in removing the children from her.

DCFS argues that Angel M. cannot challenge the removal order, having invited any error by requesting that the children be placed with their father. We have reviewed this purported request and conclude that the record does not support DCFS's contention. In the portion of the record that DCFS relies upon, Angel M.'s counsel emphasized that her client was cooperating with the court: "[M]y client is really trying to put her children first and she is trying to separate the issues that she has with the father and yet feels she's not being treated fairly. She didn't know about any 5150 [meaning that she had not been notified that one of the children very recently had been involuntarily confined]. *When the recommendation was that these children go and live with her father, she told me that she wanted them to be with their father.*" In her argument, Angel M.'s counsel asked why no one was judging James M. on the basis of the one child's psychiatric emergency: "These children have been living with their father, why is nobody pointing a finger and saying what's going on in the house that this child, who has been living with her father for a month or two, is now trying to cut her wrists . . . ?" The statement that the mother was attempting to be compliant and cooperative was clearly a preface to complaints about the circumstances and cannot reasonably be interpreted as a request that the children remain removed from Angel M.'s custody and placed in the home of the father.

However, substantial evidence supports the juvenile court's disposition order. Section 361, subdivision (c)(1) provides that a dependent child may not be removed from parental custody unless the juvenile court finds by clear and convincing evidence that there would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and that there exist no reasonable means by which the minor's physical safety can be protected without removing the minor from the parent's physical custody. "The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate." (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

Assessing the record under this standard, we find sufficient evidence to support the juvenile court's determination that there was a risk of substantial harm to the children. The allegations in the sustained petition were supported by the evidence presented to the juvenile court. According to that evidence, Angel M. had become engaged in physical confrontations with two of her older children, including the one incident in which she broke down Elliott M.'s door with a hammer and advanced upon him, breaking the cell phone she took from him. In her physical altercation with Chloe M., she advanced on Chloe M. and attempted to wrest the cell phone from her hand, causing the two to fall. Even the youngest child, Isabella M., described being dragged by the shirt collar by Angel M., and that it hurt, feeling like a bruise. At least one of the children, Elliott M., reported being afraid of his mother and what she might do if she lost control again as she had done when she broke into his room with a hammer. Chloe M. said she did not feel safe with her mother. The court specifically found at the jurisdictional hearing that the "physical struggles" in which Angel M. engaged with her children placed the children at risk of physical harm. The evidence clearly supports the juvenile court's finding that the children were at risk of physical harm from their mother.

Angel M. also contends that the evidence was insufficient that there were no measures short of removal that would have protected the children from the risks she presented. She argues that because the parents had restraining orders against each other

and she had filed for divorce, the children would not be likely to be placed in the middle of conflicts between their parents. She also claims that she did not discuss the court case with her children during visits. While it is possible that the restraining orders and dissolution proceedings could be sufficient to address the concerns about domestic violence between the parents, Angel M.'s parental-separation argument ignores the evidence, discussed repeatedly above, of the physical threat that Angel M. personally posed to her children. The separate sustained allegations that Angel M. personally posed a threat of physical harm to her children due to the physical struggles she engaged in with them belies Angel M.'s contention that both parents were "similarly situated" at the time of the disposition hearing and that the "only difference" between the parents was that two of the children wanted to live with their father. Although Angel M. claims that the court had other options, short of removal, for protecting the children, she has not identified any of the alleged methods that the juvenile court supposedly should have employed to counter the threat of physical harm that she presented to the children. Substantial evidence supported the juvenile court's removal determination.

The juvenile court did not mention the existence of alternatives to removal at the disposition hearing (*In re Henry V.* (2004) 119 Cal.App.4th 522, 529), but this failure does not require reversal where the error is harmless. Although the court did not state a factual basis for its removal order, any error is harmless because "it is not reasonably probable such finding, if made, would have been in favor of continued parental custody." (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218.) Here, any error in failing to state for the record and reject less drastic options was harmless. The juvenile court implicitly determined that the risk of physical harm to the children was too great to leave them in Angel M.'s custody, a determination that finds adequate support in the record. In view of the evidence before the court here, we find no error.

## **DISPOSITION**

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.